

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

Douglas W. Domenech
Secretary of Natural Resources

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(703) 583-3800 Fax (703) 583-3801

David K. Paylor
Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
CELEBRATE VIRGINIA NORTH
COMMUNITY DEVELOPMENT AUTHORITY
AND
T.S.C.
FOR
CELEBRATE VIRGINIA! NORTH
VWP Permit No. 00-1816**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board, Celebrate Virginia North Community Development Authority, and T.S.C. regarding the Celebrate Virginia! North project, for the purpose of resolving certain violations of State Water Control Law, the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "CVA" means Celebrate Virginia North Community Development Authority, an authority authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. CVA is a "person" within the meaning of Va. Code § 62.1-44.3.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
6. "Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.
7. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.
8. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
9. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
13. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
14. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
15. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or

possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.

16. "Property" or "Parcel" means the tract of land located between the Rappahannock River and State Route 17 and bisected by State Route 670 in Stafford County, Virginia.
17. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
18. "Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions. 9 VAC 25-210-10.
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.14:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
20. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
21. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
22. "T.S.C." means T.S.C., a company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. T.S.C. is a "person" within the meaning of Va. Code § 62.1-44.3.
23. "USACE" means the United States Army Corps of Engineers.
24. "Va. Code" means the Code of Virginia (1950), as amended.
25. "VAC" means the Virginia Administrative Code.
26. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

27. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. The Property located in Stafford County is planned as a master-planned community and is owned by CVA and T.S.C. DEQ issued the Permit to CVA and T.S.C. in 2000 for impacts associated with the development.
2. On February 5, 2008, and December 23, 2008, DEQ staff inspected the Property for compliance with the requirements of the State Water Control Law and the Regulations. In addition to these inspections, CVA and T.S.C. submitted a Construction Monitoring Report (CMR) on June 10, 2008 and additional information on July 31, 2009, and August 25, 2009. A review of inspection reports and documentation submitted by CVA and T.S.C. show impacts have been taken, in the form of a discharge of fill material, not authorized by the Permit in the amount of 0.37 acre of wetlands and 518 linear feet of stream channel, each of which are surface waters.
3. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit dredging or filling of surface waters except in compliance with a Permit issued by the Director.
4. In addition to permitted impacts, the Permit authorized a water withdrawal from an irrigation pond onsite which releases into an unnamed tributary.
5. Part I.B.6 of the Permit required CVA and T.S.C. to submit within 180 days of the Permit execution date, the established flow rate equivalent to 30% of the mean annual flow of the unnamed tributary. CVA and T.S.C. failed to submit this information within the timeframe required by the Permit.
6. On September 23, 2009, DEQ issued NOV No. 2009-08-NRO-001 for the violation of Va. Code § 62.1-44.15:20, 9 VAC 25-210-50, and Permit Condition Part I.B.6.
7. Based on the results of the inspections and the documentation submitted by CVA and T.S.C., the Board concludes that CVA and T.S.C. have violated Permit Condition Part I.B.6, Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50, as described in paragraphs C(2) through C(5) above.
8. CVA and T.S.C. have submitted documentation that verifies that the violations described in paragraphs C(4) through C(5) above, have been corrected.

9. In order for CVA and T.S.C. to return to compliance, DEQ staff and representatives of CVA and T.S.C. have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders CVA and T.S.C., and CVA and T.S.C. agree to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$19,232.50 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

CVA and T.S.C. shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of CVA and T.S.C. for good cause shown by CVA and T.S.C., or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, CVA and T.S.C. admit the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. CVA and T.S.C. consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. CVA and T.S.C. declare they have received fair and due process under the Administrative Process Act and the State Water Control Law and they waive the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by CVA or T.S.C. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. CVA and T.S.C. shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. CVA and T.S.C. shall show that such circumstances were beyond their control and not due to a lack of good faith or diligence on its part. CVA and T.S.C. shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.


Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which CVA and T.S.C. intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and CVA and T.S.C. Nevertheless, CVA and T.S.C. agree to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. CVA and T.S.C. petition the Director or his designee to terminate the Order after completion of all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to CVA and T.S.C.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve CVA and T.S.C. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by CVA and T.S.C. and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of CVA and T.S.C. certify that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind CVA and T.S.C. to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of CVA and T.S.C.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, CVA and T.S.C. voluntarily agree to the issuance of this Order.

And it is so ORDERED this 4th day of August, 2011.



Thomas A. Faha, Regional Director
Department of Environmental Quality

Celebrate Virginia North Community Development Authority voluntarily agrees to the issuance of this Order.

Date: 5/6/11 By: John T. Simpson Jr. Chairman
(Person) (Title)
Celebrate Virginia North Community Development Authority

Commonwealth of Virginia

City/County of Fredericksburg

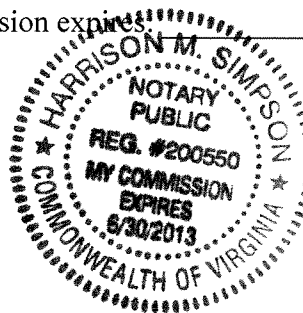
The foregoing document was signed and acknowledged before me this 6 day of MAY, 2011, by John T. Simpson Jr. who is Chairman of Celebrate Virginia North Community Development Authority, on behalf of the authority.

[Signature]
Notary Public

Registration No. _____

My commission expires _____

Notary seal:



T.S.C. voluntarily agrees to the issuance of this Order.

Date: 6.1.11 By: Gary Schaal member
(Person) (Title)
T.S.C.
Mainline Golf,
Successor to TSC
BLS

Commonwealth of Virginia

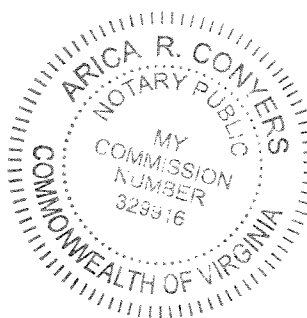
City/County of Fredericksburg

The foregoing document was signed and acknowledged before me this 1st day of
June, 2011, by Gary Schaal who is
member of T.S.C., on behalf of the authority.
Mainline Golf, LLC Successor to T.S.C.
Arica R. Conyers
Notary Public

329916
Registration No.

My commission expires: 07.31.2011

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

CVA and T.S.C. shall:

1. Within 30 days of the execution date of this Order, submit proof of purchase of 0.67 wetland credits from an approved wetland mitigation bank. The wetland mitigation bank chosen by CVA and T.S.C. shall be approved by DEQ prior to purchase.
2. Within 30 days of the execution date of this Order, submit an approvable Corrective Action Plan (CAP) that shall detail how it will either restore or provide compensation for the 518 lf of stream channel that have been impacted without a Permit. The CAP must meet the requirements of 9 VAC 25-210-116 and be sufficient to achieve no net loss of existing wetland acreage and no net loss of functions in all surface waters. CVA and T.S.C. shall respond to any DEQ Notice of Deficiency regarding the CAP within 14 calendar days.
3. Upon DEQ approval of the CAP, CVA and T.S.C. shall begin implementation of the Corrective Action Plan in accordance with the schedule contained therein. Any changes to the approved Final CAP or schedule shall not be initiated without advance notice to and approval by DEQ. CVA and T.S.C. shall complete the CAP in accordance with its terms.
 - a. If the performance criteria specified in the Final CAP are not achieved at the end of the applicable monitoring period, then CVA and T.S.C. shall so advise DEQ in the applicable monitoring report for that monitoring period and shall describe why it appears the criteria could not be achieved. If DEQ thereafter so directs, CVA and T.S.C. shall submit to DEQ for review and approval an alternative CAP within 60 days of DEQ's letter requiring the same. The DEQ-approved alternative CAP shall then be implemented by CVA and T.S.C. in accordance with the schedule set forth in the alternative CAP.
 - b. If the performance criteria specified in the Final CAP or any alternative CAP are not achieved by the end of the last monitoring period and DEQ determines that additional corrective action cannot sufficiently address the reasons for such failures, then CVA and T.S.C. shall submit to DEQ for review and approval, within 30 days of such determination, a proposal to purchase mitigation bank credits or contribution to an in-lieu fee fund to address any remaining corrective action required in the Final CAP or, as applicable, any previously submitted alternate CAP. CVA and T.S.C. shall respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the notice. CVA and T.S.C. shall purchase mitigation back credits or make contributions to an in-lieu fund, as approved by DEQ in accordance with this paragraph, within 30 days of DEQ approval.
4. Comply with the water withdrawal monitoring procedure approved by DEQ. The procedures shall be considered approved upon receipt of written approval from DEQ.

5. Within 60 days of the execution of this Order, submit an Operations and Maintenance Manual, which outlines how the irrigation system will be managed to comply with the VWP Permit 00-1816.
6. Unless otherwise specified in this Order, submit all requirements of Appendix A of this Order to:

Northern Regional Office
Department of Environmental Quality
Attn: Enforcement
13901 Crown Court
Woodbridge, VA 22193